

## Message Text

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63

ACTION ARA-17

INFO OCT-01 ADP-00 CIAE-00 DODE-00 PM-07 H-02 INR-10 L-03

NSAE-00 NSC-10 PA-03 RSC-01 PRS-01 SS-15 USIA-12

COME-00 EB-11 LAB-06 SIL-01 OMB-01 TRSE-00 AID-20

RSR-01 /122 W

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R 312237 Z MAY 73

FM AMEMBASSY SANTIAGO

TO SECSTATE WASHDC 4438

INFO USCINCSO

C O N F I D E N T I A L SANTIAGO 2337

E. O. 11652: GDS

TAGS: CI, PINT

SUBJ: CONSTITUTIONAL TRIBUNAL SIDESTEPS THREE AREAS IMBROGLIO

REF SANTIAGO 2090

1. SUMMARY. CONSTITUTIONAL TRIBUNAL HAS DENIED ITSELF AUTHORITY TO ENTERTAIN THREE AREAS CONSTITUTIONAL DISPUTE. ALTHOUGH OPPOSITION IS CROWING THAT RESULT VINDICATES THEIR LEGAL POSITION, RULING IS NOT A BAD ONE FOR GOVT IN THAT IT FURTHER MUDDIES THIS COMPLEX QUESTION, PERPETUATES STATUS QUO FAVORING GOVT, AND LEAVES OPPOSITION IN QUANDARY. END SUMMARY.

2. BY 4 TO 1 VOTE, CONSTITUTIONAL TRIBUNAL MAY 30 PRONOUNCED SELF INCOMPETENT TO ACCEPT EXECUTIVE' S REQUEST TO RESOLVE LEGISLATIVE- EXECUTIVE IMPASSE OVER MAJORITY NEEDED TO OVERRIDE EXEC VETOES OF CONSTITUTIONAL AMENDMENT BILLS. CASE AT HAND WAS LONG- FESTERING THREE AREAS AMENDMENT BY WHICH OPPOSITION' S CONGRESSIONAL MAJORITY SOUGHT BLOCK FURTHER NATIONALIZATION EXCESSES.

3. IN PART OUT OF SKEPTICISM OF TRIBUNAL' S IMPARTIALITY,  
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OPPOSITION HAS CONSISTENTLY HELD THAT TRIBUNAL LACKED JURISDICTION. AGREEING WERE TRIBUNAL MEMBERS RAFAEL RETAMAL AND ISRAEL BORQUEZ ( SUPREME COURT JUSTICES) WHO BACKED MAJORITY OPINION WRITTEN BY ENRIQUE SILVA CIMMA, AN ALLENDE APPOINTEE. JACOBO SCHAULSOHN' S DISSENTING OPINION CONCURED ON INCOMPETENCE, BUT ON NARROW TECHNICAL GROUNDS. SOLE DEFENDER OF TRIBUNAL' S COMPETENCE WAS ALLENDE APPOINTEE ADOLFO VELOSO.

4. EXECUTIVE IMMEDIATELY ISSUED STATEMENT DECLARING THAT SINCE TRIBUNAL REFUSED HEAR DISPUTE, GOVT WAS PROCEEDING MERELY TO PROMULGATE UNVETOED PORTIONS OF BILL. OPPOSITION HAS ATTACHED THIS TACTIC AS UNCONSTITUTIONAL, MAINTAINING TRUNCATED BILL DISTORTS LEGISLATIVE INTENT. GOVT COUNTERS CITING PRECEDENTS FROM PREVIOUS ADMINISTRATIONS. IF ALLENDE FAILS PROMULGATE BILL IN ENTIRETY OR CALL NATIONAL REFERENDUM BY JUNE 7, SOME OPPOSITION LEGISLATORS ARE NOW CONTENDING, PRESIDENT WILL FIND HIMSELF OUTSIDE THE CONSTITUTION. GOVT HAS MADE IT ABUNDANTLY CLEAR IT PLANS NEITHER.

5. COMMENT. ALTHOUGH ANTI- GOVT MEDIA GIVE IMPRESSION ALLENDE HAS SUFFERED SIGNAL REVERSE, ISSUE SEEMS BACK AT SQUARE ONE. OPPOSITION SPOKESMEN HAD DECLARED THEY WOULD NOT RECOGNIZE A TRIBUNAL RULING IN ANY EVENT, SO GOVT MAY NOT BE UNHAPPY AT HAVING THIS WRANGLE MUDDIED FURTHER. THE STATUS QUO FAVORS GOVT, SINCE THERE REMAINS NO MECHANISM FOR STOPPING- UP LOOPHOLES GOVT HAS USED TO EXPAND CONTROL OVER ECONOMY. HAD OPPOSITION' S " SIMPLE MAJORITY" THESIS BEEN CONSIDERED AND PROSPERED, GOVT WOULD HAVE FOUND ITSELF UP AGAINST A LEGISLATIVE WEAPON NOT EASILY DISMISSED. AS FOR REFERENDUM OPTION, DESPITE OPPOSITION TAUNTS, NEITHER SIDE SEEMS REALLY ANXIOUS TO TAKE TO THE PEOPLE AN ISSUE AS ELECTORALLY UNCERTAIN AS THREE AREAS.

6. THERE ARE OF COURSE THOSE IN OPPOSITION ANXIOUS TO EXACERBATE TENSIONS OF RECENT DAYS AND PROD MILITARY. FOR THEM THIS CLOUDY LEGAL SITUATION FURNISHED PLAUSIBLE OPPORTUNITY TO LAUNCH TOKEN INITIATIVE TO IMPEACH PRE ALLENDE. PN SENATOR SERGIO DIEZ Q.- MODERATE INPNL PUBLICLY SUGGESTED AS MUCH WHEN HE TOLD REPORTERS MAY 30 THAT IF ALLENDE FAILS EITHER TO PROMULGATE OR CONVOKE REFERENDUM, CONFIDENTIAL

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" HE MUST FACE THE RESPONSIBILITIES" DERIVING FROM ANY CONSTITUTIONAL BREACH.

7. WE HAVE REASON BELIEVE SOME TRIBUNAL MEMBERS WERE GROPING FOR WAYS TO DUCK ISSUE. WHETHER MAJORITY OPINION WAS GUIDED BY AVERSION FOR POLITICAL CROSSFIRE, LEGAL

NICETIES OR OTHER CONSIDERATIONS, RESULT MAY SERVE ENHANCE  
TRIBUNAL' S CREDENTIALS IN OPPOSITION CIRCLES. HOWEVER, WE  
ARE ALREADY HEARING OPPOSITION CLAIMS THAT SPLIT VOTE OF ALLENDE  
APPOINTEES WAS MERE " WINDOW DRESSING."  
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